FILE COPY

NOV 24 1947

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 90.

PEOPLE OF THE STATE OF ILLINOIS ex rel. VASHTI McCOLLUM,
Appellant,

v.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a Minor, by ELMER C. BASH, Her Father and Next Friend, *Appellees.*

Appeal from the Supreme Court of the State of Illinois.

MOTION AND BRIEF OF AMICUS CURIAE: THE JOINT CONFERENCE COMMITTEE ON PUBLIC RELATIONS SET UP BY THE SOUTHERN BAPTIST CONVENTION, THE NORTHERN BAPTIST CONVENTION, THE NATIONAL BAPTIST CONVENTION INC., AND THE NATIONAL BAPTIST CONVENTION.

E. HILTON JACKSON,
Attorney for

The Joint Conference Committee on Public Relations Set up by the Southern Baptist Convention, the Northern Baptist Convention, the National Baptist Convention Inc., and the National Baptist Convention.

CHALLEN B. ELLIS,
W. D. JAMIESON,
KAHL K. SPRIGGS,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX AND TABLE OF CASES.

	Page
Statement	3
Facts	4
Argument	5
Cases:	
Board of Education v. Barnette, 319 U. S. 624	5
Everson v. Board of Education, 330 U. S. 1	5-6
Knowlton v. Baumhover, 182 Iowa 691	7
Murdock v. Pennsylvania, 319 U. S. 105	5
Stevenson v. Hanyon, 4 Pa. Dist. R. 395	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 90.

PEOPLE OF THE STATE OF ILLINOIS ex rel. VASHTI McCOLLUM, *Appellant*,

v.

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a Minor, by ELMER C. BASH, Her Father and Next Friend, *Appellees*.

Appeal from the Supreme Court of the State of Illinois.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

To The Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for The Joint Conference Committee on Public Relations set up by the Southern Baptist Convention, the Northern Baptist Convention, the National Baptist Convention Inc., and the National Baptist Convention, respectfully moves this Court for leave to file

the accompanying brief as amicus curiae. The Joint Conference Committee on Public Relations is appointed each year by the Conventions above mentioned. The activities of the Committee, among others, include the maintenance of religious freedom and the separation of church and state whenever in its judgment these principles are imperiled. Other activities of the Joint Conference Committee may be undertaken from time to time as may be suggested by its membership.

The issue presented in this case is the constitutional validity of a system arranged for by public school authorities under which sectarian religious instruction is conducted within public school buildings within regular school hours.

We have sought, but have been unable to obtain, the consent of counsel for appellees to the filing of this brief. Appellant's consent has been filed.

Dated: Washington, D. C., November 13, 1947.

E. HILTON JACKSON,
Attorney for

The Joint Conference Committee on Public Relations Set up by the Southern Baptist Convention, the Northern Baptist Convention, the National Baptist Convention Inc., and the National Baptist Convention.

CHALLEN B. ELLIS,
W. D. JAMIESON,
KAHL K. SPRIGGS,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 90.

PEOPLE OF THE STATE OF ILLINOIS ex rel. VASHTI McCOLLUM, *Appellant*,

v.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a Minor, by ELMER C. BASH, Her Father and Next Friend, *Appellees*.

Appeal from the Supreme Court of the State of Illinois.

BRIEF OF AMICUS CURIAE, THE JOINT CONFERENCE COMMITTEE ON PUBLIC RELATIONS SET UP BY THE SOUTHERN BAPTIST CONVENTION, THE NORTHERN BAPTIST CONVENTION, THE NATIONAL BAPTIST CONVENTION INC., AND THE NATIONAL BAPTIST CONVENTION.

STATEMENT.

This brief is filed on behalf of and by the authority of The Joint Conference Committee on Public Relations set up by the Southern Baptist Convention, the Northern Baptist Convention, the National Baptist Convention Inc., and the National Baptist Convention.

The Conventions mentioned maintain by voluntary support of their membership a large number of schools and

colleges in excess of 130, with a student body, including theological seminaries, of approximately 60,000.

It may be said that the interest of the Joint Conference Committee is specific, but also the issue is of vital concern to all religious groups calling for a pronouncement by this Court as to whether the factual situation presented constitutes an invasion of the time-honored doctrine of the separation of church and state safeguarded by the Constitution. The question is thus squarely presented here for the first time, whether a state may, consistently with the bill of rights of the Constitution, arrange for and carry out the teaching by various religious sects of their respective religious doctrines to public school children in the public school rooms during school hours.

FACTS.

A full statement of the facts, in detail, has been made in the brief for Appellant and the essential facts necessary to a decision, as we view it, are stated also in the opinion of the Court below (R. 268, 269). Since the principal fact upon which we rely is so simple and is undisputed, we deem it unnecessary to repeat here a detailed and separate statement of facts.

The outstanding fact is that, by arrangement with the Board of Education in the Champaign School District, an organized group or committee of several church organizations in the city took over the teaching of their respective creeds to the children who were attending public schools in that city and conducted such instruction in the school rooms during regular school hours for a certain period of time during the school week (R. 61, 65). This plan of having religious instruction in the public schools was carried out in cooperation with the parents of the public school children by having the parents designate the particular religious belief in which such teaching was desired, and the children whose parents did not desire such instruction, were segregated from the others but were required to remain

"at school" and they (as well as those who took such instruction) remained all the time under the jurisdiction and control of the public school authorities. (R. 61, 62, 65, 132, 175, 193, 255)

ARGUMENT.

Recent decisions of this Court involving the religious clause in the Constitution, have established certain principles in the interpretation and application of the First Amendment providing that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof":

First. It is now well established that the mandate of the First Amendment applies to the states as well as to the Federal Government; that the rights guaranteed in that amendment are of the kind protected by the Fourteenth Amendment which is applicable to the states and therefore that a law respecting an establishment of religion or prohibiting the free exercise thereof by any state would be a violation of the Federal Constitution (*Murdock* v. *Pennsylvania*, 319 U. S. 105, *Board of Education* v. *Barnette*, 319 U. S. 624 and several later cases).

Second. The "establishment of religion" provision is just as much a mandate to the states as the provision for "free exercise of religion" (*Everson* v. *Board of Education*, decided February 10, 1947, 330 U. S. 1).

Third. The First Amendment, now applicable to the states, is not limited to restrictions upon the exercise of religious liberty, but embraces aid in any form to religious organizations (*Everson case, supra*).

Fourth. The provisions of the First Amendment, both as to aid and restrictions, apply not alone to the churches or religious organizations but to other religious activities, including schools and other educational activities of religious bodies. The absolute separation of church and state

thus means that in states there must be that separation in the public schools operated by the states (*Everson case, supra; Board of Education* v. *Barnette, supra*).

To sum up, the Supreme Court in the *Everson case*, referring to the First Amendment and the growth of the doctrine of the separation of church and state in Virginia, said:

> "The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was *stripped of all power to tax, to support, or otherwise to assist* any or all religions, or to interfere with the beliefs of any religious individual or group." (Italics supplied)

And again:

> "* * * the question has most frequently arisen in connection with proposed state aid to church schools and efforts *to carry on religious teachings in the public schools* in accordance with the tenets of a particular sect * * * The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments." (Italics supplied)

The Court then speaks of the difficulty of drawing a line between *tax legislation* for the welfare of the public generally and tax legislation to support institutions which teach religion. But there was no hint of any difficulty in drawing the line between teaching religion in the public schools (or other participation of religious organizations in public institutions) and participation of public institutions in religious organizations. Indeed, the Court emphatically stated:

> "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*."

From these decisions it seems to follow logically and inevitably that a commingling of religious teaching and secular

teaching, participated in by representatives of religious organizations and employees of the state in its public school system is a violation of the First Amendment, as it applies to the states.

We need not consider the various questions as to the course of study which may or may not be prescribed in the public schools, which have arisen in a number of states but which have no real application to the precise situation here presented. We are confronted here with the question of constitutional validity of state action (through local school boards) authorizing the conducting of religious exercises by ministers or representatives of religious organizations in the school rooms during school hours as part of the school session of such public schools.

As far as research has been able to develop, no state in the Union and no state court in the United States (except alone in this decision from Illinois), has sanctioned such a commingling of the affairs of church and state at any time since the adoption of the public school system. On the contrary, in the early cases where the question has arisen, the state courts have been emphatic in denying any such right under the fundamental provisions of the separation of church and state found in nearly every state constitution.

In an early case in Pennsylvania, *Stevenson* v. *Hanyon*, 4 Pa. Dist. R. 395, (quoted in *Knowlton* v. *Baumhover*, 182 Iowa 691) the Pennsylvania Court says:

> "*It is too plain for argument* that denominational religious exercises and instructions in sectarian doctrine have no place in our system of common-school education. They are not only not authorized by any law, common or statutory, but are expressly . . . forbidden by our . . . fundamental law of the commonwealth." (Italics supplied)

In *Knowlton* v. *Baumhover*, 182 Iowa, 691, it is said by the Iowa Court:

> "*If there is any one thing which is well settled in the policies and purposes of the American people* as a

whole, it is the fixed and unalterable determination that there shall be an absolute and unequivocal separation of church and state, and that our public school system, supported by the taxation of the property of all alike—Catholic, Protestant, Jew, Gentile, believer, and infidel—shall not be used directly or indirectly for religious instruction, and above all that it shall not be made an instrumentality of proselyting influence in favor of any religious organization, sect, creed or belief.

"* * * We can and do hold in high respect the convictions of those who believe it desirable that secular and religious instruction should go hand in hand, and that the school which combines mental and spiritual training is best adapted to the proper development of character in the young. The loyalty to their professed principles which leads such persons to found and maintain schools of this class at their private expense, while at the same time bearing their equal burden of taxation for the support of public schools, is worthy of admiration and convincing proof of their sincerity. But it is doubtless true that this double burden (double only because voluntarily assumed) sometimes renders those who bear it susceptible to the misleading argument that because they thus carry an extra load for conscience's sake, there is something wrong in the policy which forbids them to make the public school a means for accomplishing the end for which the parochial school is designed. * * * But, as we have before intimated, the right of a controversy of this kind is not to be decided by a count of the number of adherents on either side. The law and one are a majority, and must be allowed to prevail. The spirit which would make the state sponsor for any form of religion or worship, and the religion, whether Protestant or Catholic, which would make use of any of the powers or functions of the state to promote its own growth or influence, are un-American; they are not native to the soil; they are inconsistent with the equality of right and privilege and the freedom of conscience which are essential to the existence of a true democracy."

Since, according to the principles announced by this Court in the *Everson case, supra,* neither a state nor the Federal Government can, openly or secretly, participate in

the affairs of any religious organizations or groups, and religious organizations or groups cannot participate in the affairs of the state or the Federal Government, and since establishment and maintenance of a public school system with compulsory attendance of pupils not attending private schools are clearly matters of state affairs, the question of constitutional validity of such co-mingling and participation as is shown in the case now before this Court seems to us to answer itself.

There could hardly be a more obvious participation by state and church authorities in the affairs of each other than the use of the public school system during school hours for religious teaching—not only religious teaching but also selection of particular sects of religion—and their joining by arrangement with and sanction of the public school authorities in teaching in the school rooms during school hours the doctrines of one or several particular sects of religion.

The important fact in considering the cooperation of church and state presented in this case is that the time involved, however short or long, is time when the children are required to be and are under the jurisdiction of the school board, acting by or through the Superintendent of Schools, or principal of the particular school and the place used is a place—the public school house—over which the school board has jurisdiction and control—not as custodian merely of public property but in its capacity of agent of the state furnishing public education by means of a public school system. At the time the children are offered or given Catholic, Protestant or Jewish instruction, they are in the care and custody, as it were, of the public school authorities, they are not on their own time or under their parents' care, free to absent themselves from school, without being truant and without accounting for their time to public authorities, and their attendance at school, whether in one room or another or in the hall, goes on as part of the regular school time which they are required to give to education and time for which they are credited in notation of their "school hours."

That they do not have to take part in the religious services or instruction being conducted is beside the point; they are held in school under the care of principal or other school authority; they are still public school pupils attending a public school during public school hours and the arrangement for this part of their school routine was made by the school board or other school authority, acting in its official capacity of taking care of the education, at the expense of the public, of the school children in the particular district, town or city. To say that the teachers of sectarian doctrines are paid for by the churches and not by the state or that the children are not compelled to attend religious instruction, ceremonies or services held in the school during the time they are required to attend and be present at school, misses the point of constitutional law with which we are dealing and merely "entangles in precedents" the fundamental question of separation of church and state.

However desirable may be the widespread teaching of religion to children, it seems "too plain for argument" that the public school system, with compulsory education laws, cannot be used for that purpose.

Respectfully submitted,

E. HILTON JACKSON,
Attorney for

The Joint Conference Committee on Public Relations Set up by the Southern Baptist Convention, the Northern Baptist Convention, the National Baptist Convention Inc., and the National Baptist Convention.

CHALLEN B. ELLIS,
W. D. JAMIESON,
KAHL K. SPRIGGS,
Of Counsel